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OFFICE OF PETITIONS

In re Application of	:	
He et al.	:	DECISION ON PETITION TO
Application Number: 10/719682	:	WITHDRAW HOLDING OF
Filing Date: 11/21/2003	:	ABANDONMENT
Attorney Docket Number:	:	
2639/A96	:	

This is a decision on the petition filed on January 30, 2008, to withdraw the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

The application was held abandoned for failure to timely respond to the Office action requiring restriction and/or election (hereinafter "the Office action") mailed on April 11, 2007, which set a one (1) month shortened statutory period for reply. The filing of the present petition precedes the mailing of Notice of Abandonment.

Petitioners assert that the Office action mailed on April 11, 2007, was never received.

In the absence of any irregularity in the mailing of the Office action mailed on April 11, 2007, there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53

(November 16, 1993) and M.P.E.P. § 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail.¹

In support of the petition, petitioners' registered patent practitioner has provided a copy of his docket report where the non-received Office action would have been entered, showing that the Office action was not received, and has provided a statement that a search of the file jacket and docket records indicates that the Office action was not received.

The petitioners have made a sufficient showing of nonreceipt of the Office action. Accordingly, there was no abandonment in fact. Any holding of abandonment is withdrawn.

Receipt of the amendment including an election of claims filed with the present petition is acknowledged.


The \$400.00 fee filed with the present petition is unnecessary and will be credited to counsel's deposit account.

As a response to the Office action mailed on April 11, 2007, has been filed with the petition, it is not necessary to remail the Office action. Rather, the application will be referred to the Technology Center for action on the reply filed with the present petition.

The petition is GRANTED.

The application is referred to Technology Center Art Unit 2626 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.


Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

¹ It is also noted that the Office action was returned to the Office as undeliverable on April 16, 2007. As such, the showing of record also suggests that the Office action was not received because it was inexplicably returned to the Office as undeliverable.